

DEPARTMENT OF STATE REVENUE

**LETTER OF FINDINGS NUMBER: 28-920861
Controlled Substance Excise Tax
For The Period: 1992**

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

I. Controlled Substance Excise Tax—Liability

Authority: IC 6-7-3-5

The taxpayer protests the assessment of controlled substance excise tax.

STATEMENT OF FACTS

On September 2, 1992, an Indiana Conservation Officer, along with a police officer, witnessed two men handling and cutting marijuana plants. After watching the men, the officers identified themselves as police officers. One of the men followed the officers' orders—person "A", the other man successfully fled the scene. After the arrest, the man that was apprehended, namely "A," identified the taxpayer as the other person with him in the marijuana field. The taxpayer was arrested at his home; the criminal charges against him were later dismissed. The taxpayer maintains that he was not in the marijuana field that day with "A."

The marijuana was tested and weighed in the presence of an Indiana Department of Revenue Criminal Investigation Division agent. The weight was 90,720 grams. The Department issued a jeopardy assessment against the taxpayer on September 10, 1992.

I. Controlled Substance Excise Tax—Liability**DISCUSSION**

In Indiana, the manufacture, possession or delivery of marijuana is taxable. IC 6-7-3-5 (hereinafter referred to as “CSET”). Indiana law specifically provides that notice of a proposed assessment is *prima facie* evidence that the Department’s claim for the unpaid tax is valid. The taxpayer then bears the burden of proving that the proposed assessment is wrong.

The taxpayer argues that he was not in the marijuana field on that day. The taxpayer points out that in his plea agreement—entered into November of 1994—the court noted that “A” had since changed his statement. “A” no longer contended that the taxpayer was the person with him in the field, but instead named another gentleman. In fact, “A” testified under oath that it was not the taxpayer. The taxpayer also points out that his plea agreement, which dismissed the marijuana charges, was for violation of his probation. The taxpayer was on probation at the time of arrest. The probation was for another unrelated crime.

The taxpayer also supplied the Department with a copy of the results from a polygraph test he took in September of 1992. In that polygraph test, the taxpayer stated that he was not in the field on the day of the arrest and that he did not know anything about the marijuana field until he was arrested. The conclusion of the polygraph examiner, who is certified in Indiana and licensed in Kentucky, is that the taxpayer “told the truth” during his polygraph examination.

The Department’s argument rests upon the testimony of one of the officers in the marijuana field. The officer, at the probation hearing, testified that he observed the taxpayer in the marijuana field with “A.” The taxpayer reiterates that: (1) the person who initially identified him—“A”—subsequently stated under oath that it was not the taxpayer with him; (2) the criminal charges were dismissed against the taxpayer; and (3) his polygraph test suggests that he is telling the truth.

FINDING

The taxpayer’s protest is sustained.